IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION NO : 23651 of 1999

Between:

Vinjamuri Ramumurthy s/o late Sri Venkatarao

Aged 54 years, resident of D.No.2-2-12/4/D,

Chandrala Nivas,DD colony, Hyderabad

..... PETITIONER

AND

1. State Bank of India rep.by its General

Manager (D&PB) (Disciplinary authority) Vigilance Dept.

(SBI) Bank Street, Hyderabad

2. Sri M. Jithendriya Reddy, Inquiry Officer,

Vigilance Department, SBI, Bank Street, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue any writ, order or direction particularly one in the nature of Mandamus declaring the communication dated 30.07.1999 to the petitioner representation dated 3.7.1999 as arbitrary, illegal and contrary to the decisions of the Supreme Court and by nullifying the said decision direct the respondents to defer the disciplinary proceedings initiated under the proceedings No. VIG/2028 dated 9.2.1998 by the respondent No.1 till the finalistion of the criminal proceedings in CC.No.293 and 294

on the file of Judicial first class Magistrate, Janagon, Warangal District.

Counsel for the Petitioner: DR.P.B.VIJAY KUMAR

Counsel for the Respondents 1 and 2 respectively: MR.K.SRINIVASA MURTHY , Mr M.S.Ramachandra Rao

The Court made the following:

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION NO.23651 OF 1999

ORDER:

Heard Sri P.B.Vijaya Kumar, counsel for the petitioner and Sri K.Srinivasa Murthy, learned counsel appearing on behalf of respondent No.1 and Sri M.S.Rama Chandra Rao, learned counsel appearing on behalf of respondent No.2.

2. The only question, which crops up for consideration in this writ petition is, as to whether having regard to the pendency of the criminal proceedings against the petitioner, in respect of very same allegations, disciplinary proceedings initiated departmentally could be proceeded with.

3. The few facts which are necessary for consideration in this writ petition are that the petitioner is an employee of the respondent No.1, who has been initially appointed as long back as in the year 1967. However, he was placed under suspension by order dated 9.10.1993 and disciplinary proceedings were also initiated vide proceedings dated 9.2.1998. The petitioner has filed an explanation on 29.5.1998. Simultaneously, criminal case was also filed and charge sheets were filed in crime No.117/93 in C.C.Nos.293 of 1999 and 294 of 1999. Thereupon, the

petitioner has filed a representation on 3.7.1999 to the respondents stating that in view of the pendency of the criminal proceedings, departmental proceedings cannot be proceeded against. The same was rejected as per orders, dated 30.7.1999. Thereafter, the respondents have issued a telegram on 19.7.1999 to the petitioner directing him to be present in the enquiry. At this stage, the petitioner has filed the present writ petition, *inter alia* seeking for stay of the domestic enquiry, mainly on the ground that the criminal proceedings were pending against him. Hence, the present writ petition.

4. The main contention urged on behalf of the petitioner is that since the allegations in both the proceedings touch upon the same incident and cover self same allegations, therefore, it would be more apt to stay departmental proceedings till after completion of the criminal proceedings.

5. This Court at the time of admission of the writ petition, granted interim stay of the disciplinary proceedings as per the orders in W.P.M.P.No.29706 of 1999 dated 16.11.1999. During the course of arguments, learned counsel sought to place reliance on the decisions reported in **Capt.M.Paul Anthony v. Bharat Gold Mines Ltd.**, **State Bank of India v. R.B.Sharma**, **Secretary to Government, Prohibition & Excise Department v. L.Srinivasan** and **State of Rajasthan v. B.K.Meena .** In L.Srinivasan's case (3 supra), while quashing the suspension and charges departmentally while trial of those charges in a criminal case were pending, it was held that:

> " in the nature of charges, it would take a long time to detect embezzlement and fabrication of false records which should be done in secrecy. In quashing the suspension and the charges on the ground of delay in initiation of the disciplinary proceedings, the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal has exercised power as if he were an appellate forum dehors the limitations of judicial review. He has exceeded his power of judicial review in quashing the suspension order and charges even at threshold".

6. In State Bank of India's case (2 supra), considering the similar situation where parallel proceedings were pending, it was held that:

"On basic principles proceedings in criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. Thus, there can be no straight jacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending."

Further, on the facts of the case, it was noticed that

"In the instant case; the impugned order of the High Court shows that after noticing the rival submissions, the High Court came to an abrupt conclusion that the petitioner in the case before it (the employee) has been able to show substantially that the entire matter in the departmental proceedings and before Criminal Court is the same. No details have been indicated to justify this conclusion. Though elaborate reasoning may not be necessary to be indicated, certainly the skeletal description of how there is substantial similarity has to be indicated. That has not been done.

Held that, impugned order was liable to be set aside. Since the High Court has not indicated even skeleton basis for its conclusion that matter is substantially the same, it would be appropriate for the High Court to rehear the matter. Accordingly, the impugned order of the High Court is set aside and the matter is remitted back to the High Court for fresh consideration".

7. In M.Paul Anthony's case (1 supra), it was held that

" The conclusions which are deducible from various decisions of this Court referred to above are:

i. Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

ii. If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

iii. Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

iv. The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stop the departmental proceedings, but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

v. If the criminal case does not proceed its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be …..dicated(sic) and in case he is found guilty, administration may get rid of him at the earliest."

8. In State of Rajasthan's case (4 supra), once again considering similar situation and laying down the principles for grant of stay, it was held that:

"There is no legal bar for both proceedings disciplinary and criminal to go on simultaneously, however, in certain situations, it may not be `desirable', `advisable' or `appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings is a matter to be determined having regard to the facts and circumstances of a given case and no hard and fast rules can be enunciated in that behalf. The only valid ground for staying the disciplinary proceedings is "that the defence of the employee in the criminal case may not be prejudiced". This may be done in cases of grave nature involving questions of fact and law. It means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, `advisability', `desirability' or `propriety', as the case may be, has to be determined in each taking into consideration all the facts and circumstances of the case. One of the contending consideration is that the

> disciplinary enquiry cannot be – and should not be- delayed unduly. So far as criminal cases are concerned, it is well know that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings re held over at an earlier stage. The interests of administration and good Government".

9. From the aforesaid principles and also considering the submissions made by both sides, there is no dispute to the fact that the charge sheets have already been filed in the criminal cases and there is any delay occurring in the criminal Court and no prejudice is being caused to the petitioner, in view of the fact that both the proceedings are independent on its own nature. Further, it is to be noticed that the petitioner has absolutely, failed to establish that any delay either intentional or otherwise, is being caused in criminal side or that the respondents are responsible for the same. Further, there is every likelihood of the early disposal of the criminal case, as in normal circumstances the criminal trial is expected. In the circumstances, it has to be held that the petitioner has totally failed to establish any warranting circumstances to stay or stall the proceedings on the departmental side for any disciplinary action. Merely because the allegations and incident run on the same lines in both the cases, it is not a ground to accede to the petitioner's contention.

10. Hence, I do not find any grounds in the writ petition and the same is accordingly dismissed.

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B.PRAKASH RAO, J

RAR

1. General Manager (D&PB) (Disciplinary authority)State Bank of India Vigilance Dept.

(SBI) Bank Street, Hyderabad

2. Inquiry Officer,

Vigilance Department, SBI, Bank Street, Hyderabad.

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THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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WRIT PETITION NO.23651 OF 1999

DATED : 11.07.2005

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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FOR PRONOUNCEMENT ON 11.07.2005